

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EDWIN S. STONE,

Plaintiff,

Index No.: 08 CV 6504

-against-

VERIFIED ANSWER

CDL WEST 45th STREET, LP and CDL WEST
45th L.L.C.

Defendants.
-----X

Defendant CDL WEST 45th STREET, LLC i/s/h/a CDL WEST 45th STREET, LP and CDL WEST 45th L.L.C., ("CDL") by its attorneys, STRONGIN ROTHMAN & ABRAMS, LLP, answering the Verified Complaint of the Plaintiff, state as follows:

1. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1" of the Verified Complaint.
2. Defendant CDL submits to jurisdiction for the purposes of this action only.
3. Defendant CDL submits to jurisdiction for the purposes of this action only.
4. Defendant CDL submits to jurisdiction for the purposes of this action only.
5. Defendant CDL submits to jurisdiction for the purposes of this action only.
6. Defendant CDL submits to jurisdiction for the purposes of this action only.
7. Defendant CDL submits to jurisdiction for the purposes of this action only.
8. Defendant CDL submits to jurisdiction for the purposes of this action only.
9. Defendant CDL submits to jurisdiction for the purposes of this action only.
10. Defendant CDL submits to jurisdiction for the purposes of this action only.

11. Denies each and every allegation contained in paragraph "11" of the Complaint but begs leave to refer all questions of law to the court at the trial of this action.

12. Defendant CDL submits to jurisdiction for the purposes of this action only.

13. Defendant CDL submits to jurisdiction for the purposes of this action only.

14. Defendant CDL submits to jurisdiction for the purposes of this action only.

15. Defendant CDL submits to jurisdiction for the purposes of this action only.

16. Defendant CDL submits to jurisdiction for the purposes of this action only.

17. Defendant CDL submits to jurisdiction for the purposes of this action only.

18. Defendant CDL submits to jurisdiction for the purposes of this action only.

19. Defendant CDL submits to jurisdiction for the purposes of this action only.

20. Defendant CDL submits to jurisdiction for the purposes of this action only.

21. Defendant CDL submits to jurisdiction for the purposes of this action only.

22. Defendant CDL submits to jurisdiction for the purposes of this action only.

23. Defendant CDL submits to jurisdiction for the purposes of this action only.

24. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "24" of the Verified Complaint.

25. Denies each and every allegation contained in paragraph "25" of the Complaint but begs leave to refer all questions of law to the court at the trial of this action.

26. Denies each and every allegation contained in paragraph "26" of the Complaint but begs leave to refer all questions of law to the court at the trial of this action.

27. Deny each and every allegation contained in paragraph "27" of the Verified Complaint except admit that Defendant CDL owns the premises located at 145 West 44th Street, New York, New York upon which a hotel is operated.

28. Deny each and every allegation contained in paragraph "28" of the Verified Complaint except admit that Defendant CDL owns the premises located at 145 West 44th Street, New York, New York upon which a hotel is operated.

29. Deny each and every allegation contained in paragraph "29" of the Verified Complaint.

30. Deny each and every allegation contained in paragraph "30" of the Verified Complaint except admit that a hotel is operated at the premises owned by CDL.

31. Deny each and every allegation contained in paragraph "31" of the Verified Complaint except admit that a hotel is operated and maintained at the premises owned by CDL.

32. Deny each and every allegation contained in paragraph "32" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

33. Deny each and every allegation contained in paragraph "33" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

34. Deny each and every allegation contained in paragraph "34" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

35. Deny each and every allegation contained in paragraph "35" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

36. Deny each and every allegation contained in paragraph "36" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

37. Deny each and every allegation contained in paragraph "37" of the Verified Complaint.

38. Deny each and every allegation contained in paragraph "38" of the Verified Complaint.

39. Deny each and every allegation contained in paragraph "39" of the Verified Complaint but beg leave to refer all questions of law to the court at the trial of this action.

40. Deny each and every allegation contained in paragraph "40" of the Verified Complaint except admit that Defendant CDL owns the premises located at 145 West 44th Street, New York, New York upon which a hotel is operated.

41. Deny each and every allegation contained in paragraph "41" of the Verified Complaint except admit that Defendant CDL owns the premises located at 145 West 44th Street, New York, New York upon which a hotel is operated.

42. Deny each and every allegation contained in paragraph "42" of the Verified Complaint.

43. Deny each and every allegation contained in paragraph "43" of the Verified Complaint except admit that a hotel is operated at the premises owned by CDL.

44. Deny each and every allegation contained in paragraph "44" of the Verified Complaint except admit that a hotel is operated and maintained at the premises owned by CDL.

45. Deny each and every allegation contained in paragraph "45" of the Verified Complaint except admit that a hotel is operated and managed at the premises owned by CDL.

46. Deny each and every allegation contained in paragraph "46" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

47. Deny each and every allegation contained in paragraph "47" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

48. Deny each and every allegation contained in paragraph "48" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

49. Deny each and every allegation contained in paragraph "49" of the Verified Complaint except admit that Defendant CDL owns and controls the premises upon which a hotel is operated.

50. Deny each and every allegation contained in paragraph "50" of the Verified Complaint.

51. Deny each and every allegation contained in paragraph "51" of the Verified Complaint.

52. Deny each and every allegation contained in paragraph "52" of the Verified Complaint but beg leave to refer all questions of law to the court at the trial of this action.

53. Deny each and every allegation contained in paragraph "53" of the Verified Complaint.

54. Deny each and every allegation contained in paragraph "54" of the Verified Complaint.

55. Denies each and every allegation contained in paragraph "55" of the Verified Complaint.

56. Deny each and every allegation contained in paragraph "56" of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Any injuries and/or damages sustained by the plaintiff, as alleged in the Verified Complaint, were caused in whole or in part by the contributory negligence and/or culpable conduct of the plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of these answering defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The plaintiff assumed and accepted all risks associated with the transactions alleged in the Verified Complaint and all claims against these answering defendants must therefore be dismissed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The dangerous condition complained of was an open and obvious condition and was readily observable by a reasonable use of one's senses.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The liability of this answering defendant, if any, to the plaintiff for non-economic loss is limited to their equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence in accordance with the State of New York Civil Practice Law and Rules Article 16.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

In the event plaintiff recovers a verdict or judgment against this defendant, then said verdict or judgment must be reduced pursuant to the State of New York Civil Practice Law and Rules § 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers' compensation or employee benefit programs.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

In the event the plaintiff recovers a verdict or judgment against this answering defendant, then said verdict or judgment must be entered in accordance with the State of New York Civil Practice Law and Rules § 50-B.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join all necessary and indispensable parties in some or all of the causes of action who would be responsible for the damages alleged in plaintiff's Complaint.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

If plaintiff sustained any injuries or incurred any damages, the same were caused in whole or in part by the acts or omissions of persons other than this answering defendant, over whom they had no control, or by the superseding interventions of causes outside of their control.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The medical charges incurred by plaintiff, if any, were unnecessary and unreasonable.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff Verified Complaint fails to state a cause of action cognizable in law or equity against this answering defendant, and the Complaint must therefore be dismissed.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

This action is barred by virtue of the State of New York's Workers' Compensation Law.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

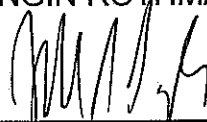
That the answering defendant was not properly served in accordance with the provisions of the State of New York Civil Practice Law and Rules and the State of New York Business Corporation Law and the court, therefore, lacks jurisdiction over the entity of said defendants.

WHEREFORE, this answering defendant demands judgment dismissing the complaint, together with the attorney's fees, costs and disbursements of this action.

Dated: New York, New York
August 26, 2008

Yours, etc.

STRONGIN ROTHMAN & ABRAMS, LLP



JILL S. TAYLOR, ESQ.

Attorneys for Defendant

CDL WEST 45th STREET, LLC

i/s/h/a CDL WEST 45th STREET, LP

and CDL WEST 45th L.L.C.

5 Hanover Square, 4th Floor

New York, NY 10004

(212) 931-8300

TO:

Frederic A. Nicholson, Esq.

26 Court Street, Suite 2011

Brooklyn, NY 11242

(718) 330-0577

Attorney for Plaintiff

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The undersigned affirms the following statement to be true under the penalty of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules.

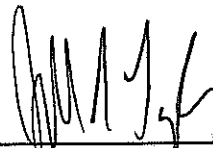
That she is associated with of the firm of STRONGIN ROTHMAN & ABRAMS, LLP, attorneys for defendant, CDL WEST 45th STREET, LLC i/s/h/a CDL WEST 45th STREET, LP and CDL WEST 45th L.L.C., ("CDL").

That she has read the foregoing document and knows the contents thereof, and that the same is true to the knowledge of your deponent except as to the matters therein alleged upon information and belief and that as to those matters she believes them to be true.

That the reason why this affirmation is being made by your deponent and not by the said defendant is that said corporation does not maintain an office with an officer having knowledge of the facts in the county where your affirmant's firm maintains its offices.

That the source of your deponent's information and the grounds of his belief as to all the matters therein alleged upon information and belief are reports from and communications had with said corporation.

Dated: New York, New York
 August 26, 2008



JILL S. TAYLOR

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

LATASHA McINTYRE, being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years, and resides in Kings County, New York. That on this 26th day of August, 2008 she served the within **VERIFIED ANSWER** upon:

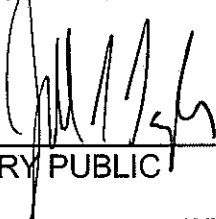
Frederic A. Nicholson, Esq.
26 Court Street, Suite 2011
Brooklyn, NY 11242
(718) 330-0577
Attorney for Plaintiff

by depositing a true copy of same securely enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, by Regular Mail.



LATASHA McINTYRE

Sworn to before me this
26th day of August, 2008



NOTARY PUBLIC

JILL S. TAYLOR
Notary Public, State of New York
No. 02TA6144183
Qualified in New York County
Commission Expires April 24, 2010

SRA FILE #847-5029

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EDWIN S. STONE,

Plaintiff,

Docket No.: 08 CV 6504
(RWS) (MHD)

-against-

VERIFIED ANSWER

CDL WEST 45th STREET, LP and CDL WEST
45th L.L.C.

Defendants.
-----X

STRONGIN ROTHMAN & ABRAMS, LLP

ATTORNEYS FOR

DEFENDANT

CDL WEST 45th STREET, LLC
i/s/h/a CDL WEST 45th STREET, LP
and CDL WEST 45th L.L.C.

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